No. _____

Supreme Court, U.S.
FILED

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In The

Supreme Court of the United States

OFFICE OF THE CLERK

October Term, 1998

BOUCHARD TRANSPORTATION COMPANY, INC.;
TSACABA SHIPPING COMPANY, INC.;
MARITRANS OPERATING PARTNERS L.P., *et al.*,

Petitioners,

v.

UNITED STATES OF AMERICA, *et al.*,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether district courts exercising their admiralty and maritime jurisdiction should apply the procedure of Supplemental Rule F to implement the limitation of liability provisions of the Oil Pollution Act of 1990 (OPA 90).

2. If not, whether this Court will make the rules needed to fill the resulting procedural void as it did in a similar situation in *Norwich Co. v. Wright*, 80 U.S. (13 Wall.) 104, 125 (1871).

INTERESTED PARTIES

In the district court the owners of vessels involved in a maritime accident commenced three limitation of liability cases under Rule F of the Supplemental Rules for Certain Admiralty and Maritime Claims. The cases were consolidated in the district court and on appeal to the circuit court. The vessel owners, limitation plaintiffs in the consolidated cases and joint petitioners here, are as follows:

BOUCHARD TRANSPORTATION COMPANY, INC.; TUG CAPTAIN FRED BOUCHARD INC.; and B NO. 155 CORPORATION. These petitioners have no parent or subsidiary companies.

MARITRANS OPERATING PARTNERS L.P. and MARITRANS GENERAL PARTNER INC. The parent company of these petitioners is MARITRANS INC. There are no subsidiary companies.

TSACABA SHIPPING COMPANY, INC.; HIONG GUAN NAVEGACION CO., LTD.; and DOWA LINE AMERICA CO., LTD. The parent company of HIONG GUAN NAVEGACION CO., LTD. and DOWA LINE AMERICA CO., LTD. is DOWA LINE CO., LTD. There are no subsidiary companies.

INTERESTED PARTIES – Continued

Those appearing in the three limitation cases as claimants, respondents here, are as follows:

Amora, Pepito G.
Anaya, Evangelisto
Ancar, Marshall
Bleckley Corp. d/b/a Etchings Lounge
Boca Ciega Hotel, Inc.
Charmar of Pinellas County, Inc., d/b/a Saxony Apartments Motel
Continental Insurance Company
Excel Hotels, Inc.
Florida Department of Environmental Protection
Garnett, Mary A.
Geiken, Mary Beth
H & H Package Store d/b/a Pappy's Package Store
Hopkins, Robert
Jones, Barry and Brenda Jones d/b/a All Suites Motel
Jones, John
Koukoulis, Yiannis
McCorkle, John Paul
Panagokas, Michael
Passamano, Russel J. as Trustee of SS MISS BELMAR, INC.
Rush, Edward P.
Salamanca, Jose A.
Scholeer, Harry
Shihadeh, Ahmad
Tobin, Don
Tobin, Joan
Updegraff, Ambrose G.
Updegraff, Ramona M.
United States of America

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1 Thomas J. Schoenbaum, *Admiralty and Maritime Law* § 3-1 at 55 (Practitioner Treatise Series, 2d. ed. 1994) 18

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PETITION FOR WRIT OF CERTIORARI

BOUCHARD TRANSPORTATION COMPANY, INC.; TUG CAPTAIN FRED BOUCHARD INC.; B NO. 155 CORPORATION; MARITRANS OPERATING PARTNERS L.P.; MARITRANS GENERAL PARTNER INC.; TSACABA SHIPPING COMPANY, INC.; HIONG GUAN NAVEGACION CO., LTD.; and DOWA LINE AMERICA CO., LTD. respectfully pray that a writ of certiorari issue to review the opinion of the United States Court of Appeals for the Eleventh Circuit entered on July 31, 1998.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit entered July 31, 1998, is reported at 147 F.3d 1344 and reproduced in the Appendix at 1. The order of the United States District Court for the Middle District of Florida of October 22, 1996, is unreported and reproduced in the Appendix at 21.

JURISDICTION IN THIS COURT

Petitioners seek review of an opinion entered on July 31, 1998, by the United States Court of Appeals for the Eleventh Circuit. The Supreme Court has jurisdiction to review cases from the Circuit Courts of Appeals under 28 U.S.C. section 1254(1).

CONSTITUTIONAL PROVISION

Article III, Section 2, of the United States Constitution provides in relevant part that "[t]he judicial Power shall extend . . . to all Cases of admiralty and maritime Jurisdiction. . . . "

RULE INVOLVED

Rule F of the Supplemental Rules for Certain Admiralty and Maritime Claims, Federal Rules of Civil Procedure, 28 U.S.C., is reproduced in its entirety in the Appendix at 33. Rule F(1) reads in relevant part as follows:

> **(1) Time for Filing Complaint; Security.** Not later than six months after receipt of a claim in writing, any vessel owner may file a complaint in the appropriate district court, as provided in subdivision (9) of this rule, for limitation of liability pursuant to statute.

STATUTES INVOLVED

The Oil Pollution Act of 1990, 33 U.S.C.A. § § 2701 *et seq.* (West Supp. 1998) (OPA 90),[1] provides in relevant part as follows:

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[1] All citations to OPA 90 are to 33 U.S.C.A. (West Supp. 1998).

§ 2704. Limits on liability

(a) General rule

Except as otherwise provided in this section, the total of the liability of a responsible party under section 2702 of this title and any removal costs incurred by, or on behalf of, the responsible party, with respect to each incident shall not exceed –

(1) for a tank vessel (except a tank vessel on which the only oil carried as cargo is an animal fat or vegetable oil, as those terms are used in section 2720 of this title) the greater of –

(A) $1,200 per gross ton; or

(B)(i) in the case of a vessel greater than 3,000 gross tons, $10,000,000; or

(ii) in the case of a vessel of 3,000 gross tons or less, $2,000,000;

(2) for any other vessel, $600 per gross ton or $500,000, whichever is greater. . . .

The Limitation of Shipowners' Liability Act of 1851, 46 U.S.C. § 181-189 (1851 Limitation Act), provides in relevant part as follows:

§ 183. Amount of liability; loss of life or bodily injury; privity imputed to owner; "seagoing vessel"

(a) The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or

> thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not . . . exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

STATEMENT OF THE CASE

Basis For Federal Jurisdiction In The District Court

Jurisdiction in the district court was under 28 U.S.C. § 1333 (admiralty and maritime jurisdiction), 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. § 1367 (supplemental jurisdiction).

Material Facts and Procedural History

During the dark, early morning hours of August 10, 1993, a bulk freighter, carrying a cargo of phosphate product, was outbound in Tampa Bay heading for the Gulf of Mexico. Inbound, two tugs pushed tank barges loaded with petroleum products. There were collisions between the bulk freighter and both tank barges.

One of the tank barges carried a cargo of light petroleum products such as gasoline and jet fuel. Its cargo exploded and burned, and the officers and crew abandoned ship. The collision tore the other tank barge open, and heavy number 6 oil spilled into the waters of Tampa Bay. As a result of tides and winds, the number 6 oil floated out of the bay into the Gulf of Mexico and ultimately came ashore in the tidal waters and on the beaches of Pinellas County, Florida.

Following the incident, the vessel owners, joint petitioners here, commenced admiralty limitation of liability proceedings under Supplemental Rule F in the United States District Court for the Middle District of Florida.

In the limitation cases, the vessel owners sought exoneration from liability. In the alternative, all of the vessel owners sought limitation of liability under the 1851 Limitation Act as to claims subject to limitation under the 1851 Limitation Act. Further, the owners of the petroleum-carrying tank barges, which had been designated "responsible parties,"[2] sought limitation of liability under OPA 90 as to claims subject to limitation under OPA 90. The 1851 Limitation Act provides for limitation of liability based on the value of a vessel, and OPA 90 provides for limitation based on the size of a vessel.

Injunctions and monitions were issued in each case pursuant to Supplemental Rules F(3) and F(4) (Appendix 25, 28), barring prosecution of claims against the vessel owners and their vessels outside of their respective limitation case and setting a deadline for claimants to appear and file their claims. The limitation cases were consolidated. This established in the district court a *concursus* of all claims arising out of the incident.

The injunctions and monitions in the limitation cases of the tank barge owners were tailored to implement the

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[2] "Responsible party" is a term used in OPA 90 to designate the owner, operator, or demise charterer of a vessel from which oil is spilled. 33 U.S.C.A. § 2701(32)(A). "Responsible party" does not necessarily equate to "at fault party" because a "responsible party" may assert absolute defenses to liability under 33 U.S.C.A. § 2703.

claims presentation procedure of OPA 90 section 2713(a) and instructed those with claims under OPA 90 to present their claims in the first instance directly to the vessel owners' representative. (Appendix 26, 34). *See generally Boca Ciega Hotel, Inc. v. Bouchard Transp. Co., Inc.*, 51 F.3d 235 (11th Cir. 1995) (enforcing the claims presentation procedure).

Numerous claimants appeared in the limitation cases and filed claims under Supplemental Rule F(5). (Appendix 35). The claims sought recovery under the general maritime law, OPA 90 and other federal environmental protection statutes, and under Florida common law and statutory law.

Claimants sought recovery of an assortment of damages. Federal and state trustees sought recovery for damage to the environment, private parties sought recovery for property damage and for economic losses arising out of the spill, the crew of one of the tugs sought recovery for personal injuries, and the vessel owners sought recovery among themselves for collision damage and damage to and loss of cargo.

Some claimants moved the district court to dismiss the limitation cases so that claimants could bring claims under OPA 90 and under Florida law outside of the limitation cases (outside of the *concursus)* in any state court or federal court having jurisdiction over the parties and their claims.

On October 22, 1996, the district court entered an order granting the motions to dismiss, ruling that Supplemental Rule F applied only to claims subject to limitation under the 1851 Limitation Act and did not apply to claims

subject to limitation under OPA 90. (Appendix 22). Thus, the injunctions creating the *concursus* were to be dissolved as to claims under OPA 90. The order did not affect claims to the extent they were based on the general maritime law and on Florida common law, which are subject to limitation under the 1851 Limitation Act, so these aspects of the limitation cases would go forward in any event.

The district court, in footnote one, stayed the effect of its order, pending the resolution of appeals, and said:

> The vessel owners raise significant and legitimate concerns regarding prejudice, inconsistent rulings, judicial economy, splitting of claims, unnecessary expenditure of resources, and the like. I concede that I experience a degree of uneasiness with the effect of today's ruling. As I announced at the conclusion of oral argument, this is one of those instances when the result that makes the most sense (and the result that perhaps ought to be pursued) is either inconsistent with or not permitted by a combination of the prevailing law and the parties. Perhaps the Eleventh Circuit will disagree with my view or the legislative and judicial bodies responsible for promulgating the governing statutes and rules will provide some clarity and guidance. Both the effect of this order and these limitation actions (as they pertain to the moving claimants) are STAYED pending the resolution of any appeals.

(Appendix 23-24).

The vessel owners appealed to the United States Court of Appeals for the Eleventh Circuit from the order

of October 22, 1996. On July 31, 1998, the Eleventh Circuit affirmed the district court's order to the extent of the ruling that claims under OPA 90 were not subject to the *concursus* procedure of Supplemental Rule F. (Appendix 1).

This petition seeks review of the Eleventh Circuit's decision.[3]

REASONS FOR GRANTING THE PETITION

I.

VESSEL OWNERS HAVE BEEN DEPRIVED OF THEIR OPA 90 LIMITATION OF LIABILITY RIGHTS BY THE LOWER COURTS' FAILURE TO APPLY SUPPLEMENTAL RULE F AS THE PROCEDURAL DEVICE TO IMPLEMENT LIMITATION RIGHTS.

One of the fundamental purposes of OPA 90 is to provide a basis for vessel owners to limit liability to some reasonable amount in the event of an oil spill. Indeed, the preamble reads: "**An Act to establish limitations on liability for damages resulting from oil pollution**, to establish a fund for the payment of compensation for such damages, and for other purposes." Act of August 18, 1990, Pub.L.No. 101-380, 1990 U.S.C.C.A.N. (104 Stat.) 484 (emphasis added). Section 2704 of OPA 90 contains the limitation provisions and grants to vessel owners the right to seek limitation of liability as to claims arising out of oil spills to certain amounts based on the size of their

[3] The Eleventh Circuit also addressed an Eleventh Amendment issue not raised in this petition. (Appendix 9-11).

vessels, such as $1,200 per gross ton under section 2704(a)(1)(A).[4]

There being no procedure within OPA 90 to implement the limitation provisions, vessel owners have relied on the procedure of Supplemental Rule F, which provides that vessel owners "may file a complaint in the appropriate district court . . . for limitation of liability **pursuant to statute**." Supplemental Rule F(1) (emphasis added).

In the absence of any other statute, rule, or regulation to implement the limitation of liability provisions of OPA 90, there is every indication that the use of Supplemental Rule F to protect limitation rights under OPA 90 was intended by Congress. The plain language of the Rule supports its use, and there is nothing in the legislative history of OPA 90 that suggests that Supplemental Rule F was not the intended procedural device for implementing the limitation of liability provisions of OPA 90. The entire legislative history of OPA 90 has been reviewed, including hundreds of pages of hearing transcripts, and there is no mention of the proper procedure for a vessel owner to follow to assert OPA 90 limitation rights. Therefore, it is reasonable to assume that Congress intended that the procedural rule already in effect–Supplemental Rule F–would be used to assert the right to limitation under OPA

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[4] "Gross ton" is a measurement of the internal volume of a vessel with 100 cubic feet of space equaling one gross ton. *See* 46 C.F.R. § 69.9 (1997). For example, the gross tonnages of the tank barges involved here are 9,262 and 14,679, so the OPA 90 limits on liability at $1,200 per gross ton would be $11,114,400 and $17,614,800, respectively.

90. Congress should not be presumed to have been ignorant of this process and its efficacy. *See Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990) (Congress is presumed to be aware of existing law).

Notwithstanding the clear need for a procedure to implement the limitations on liability in OPA 90, the Eleventh Circuit in this case and the First Circuit in *In re Metlife Capital Corp.*, 132 F.3d 818, *cert. denied sub nom, In re Bunker Group, Inc.*,___ U.S.___, 118 S. Ct. 2367 (1998), denied to vessel owners the use of Supplemental Rule F to seek limitation of liability under OPA 90, restricting use of the rule to the 1851 Limitation Act. The rulings of those courts are tantamount to a denial of vessel owners' right to avail themselves of the limitation of liability provisions of OPA 90. Therefore, if the Eleventh Circuit's decision in this case and the First Circuit's decision in *Metlife* remain the law, vessel owners' limitation rights under OPA 90 will remain illusory, rendering a significant part of OPA 90 meaningless. Vessel owners find themselves left with a right but no procedure to enforce the right.

This Court has observed:

> Unless, therefore, the District Courts themselves can administer the law, we are reduced to the dilemma of inferring that the Legislature has passed a law which is incapable of execution. This is never to be done if it can be avoided.

Norwich Co. v. Wright, 80 U.S. (13 Wall.) 104, 123-124 (1871).

The lower courts have protected well the rights of claimants seeking recovery of damages under OPA 90 but

have completely ignored the rights of vessel owners. OPA 90 represents a balance of the interests of vessel owners and of claimants. OPA 90 provides a scheme for limitation of liability of vessel owners and for claimants to recover fully, if not from vessel owners whose liability might be limited, then from the Oil Spill Liability Trust Fund under OPA 90 section 2712. However, the lower courts have left vessel owners without the procedural ability to limit their liability, destroying the balance. This may well be a result of a belief that polluters' rights (regardless of fault) do not deserve the same respect as victims' rights. This Court recently rejected such reasoning. *See United States v. Bestfoods*, ___ U.S. ___, 118 S. Ct. 1876, 1884-1885 (1998).

II.

TO IMPLEMENT LIMITATION OF LIABILITY RIGHTS, A PROCEDURE MUST EXIST FOR MARSHALING ALL CLAIMS RESULTING FROM AN OIL SPILL INTO ONE CASE, CREATING A *CONCURSUS* OF CLAIMS.

Absent a procedure for marshaling all claims arising out of an oil spill into one case, establishing a *concursus* of claims, vessel owners' limitation rights cannot be protected. Consider the fate of the owner of a 10,000 gross ton tank vessel sued by ten claimants in ten separate lawsuits, in each of which it is ruled that the vessel owner is entitled to limitation of liability to $12,000,000 ($1,200.00 x 10,000 gross tons). There is nothing to prevent each claimant from recovering $12,000,000 so that the vessel owner would end up having to pay

$120,000,000, ten times what Congress intended the vessel owner's maximum liability to be.

Only when claims are marshaled into a single forum may a vessel owner be assured that it will not be required to pay more than its limited liability, provided the right to limit liability is established. Res judicata does not solve the problem, because the plaintiff in each lawsuit would be different. Res judicata applies only if a certain plaintiff commences successive lawsuits. *See Brown v. Felsen*, 442 U.S. 127, 131 (1979) (indicating that res judicata bars further claims by the same parties or their privies); *S.E.L. Maduro (Florida), Inc. v. M/V ANTONIO DE GASTANETA*, 833 F.2d 1477, 1481 (11th Cir. 1987) (noting that res judicata precludes multiple suits between the same parties). Similarly, consolidation of separate actions is not a solution. Without a *concursus*, individual cases may proceed both in federal courts and in state courts under the concurrent jurisdiction provisions of OPA 90 sections 2717(b) and (c). There is no basis upon which to consolidate federal and state proceedings. Only Supplemental Rule F creates the required *concursus* of claims in a single court.

Likewise, vessels will be subjected to multiple arrests or attachments following a pollution incident if this Court does not clarify that Supplemental Rule F applies to OPA 90. Supplemental Rule C allows claimants to proceed against vessels *in rem*. Similarly, Supplemental Rule B, in certain circumstances, allows attachment of vessels (or other property of the vessel owner) as a form of substituted service of process to perfect *in personam* claims. The only real obstacle to successive arrests or attachments of a vessel in different ports by different claimants is Supplemental Rule F(3), under which the district court enjoins

other actions against the vessel owner "or the owner's property with respect to the matter in question. . . ." Without Supplemental Rule F limitation procedure, a vessel involved in a significant pollution incident would in all likelihood be entirely removed from commerce by suffering multiple, sequential arrests or attachments, causing insurmountable problems for the vessel owner (such as with its mortgagees and insurers). As with the example set forth above involving ten claimants with ten separate lawsuits, successive arrests or attachments would result in liability far beyond the maximum liability Congress intended the vessel owner to face.

Furthermore some claimants have claims based variously on general maritime law, OPA 90, and Florida law. Therefore, if there is no *concursus* of claims, some of the claims of those having multiple basis upon which to assert claims will remain in the limitation cases and other of their claims will be brought elsewhere. This runs counter to established policy against the splitting of causes of action. *See Baltimore S.S. Co. v. Phillips*, 274 U.S. 316, 320 (1927).

This Court has emphasized the importance of the *concursus*, saying:

> The heart of [the limitation] system is a *concursus* of all claims to ensure the prompt and economical disposition of controversies in which there are often a multitude of claimants.

Maryland Casualty Co. v. Cushing, 347 U.S. 409, 415 (1954) (speaking in reference to the 1851 Limitation Act).

Similarly, maritime law commentators have concluded:

> That a *concursus* is inherent in a limitation proceeding is evidenced by the fact that all limitation regimes, including those that contemplate claims being brought in courts of different countries, provide for a *concursus* of claims. . . . Indeed, it is impossible to imagine how limitation would work, regularly or otherwise, without a *concursus*.

Robert Force & Jonathan M. Gutoff, *Limitation of Liability in Oil Pollution Cases: In Search of Concursus or Procedural Alternatives to Concursus*, 22 Tul. Mar. L.J. 331, 369-370 (1998).

That a *concursus* of claims in a single forum is necessary to give effect to limitation rights of vessel owners was recognized by this Court when the 1851 Limitation Act was first considered. The 1851 Limitation Act, in its original form, was void of any procedure to give it effect, prompting this Court to set forth in its opinion the procedure for vessel owners to follow, which included a *concursus* of claims in a single forum. *Norwich Co. v. Wright*, 80 U.S. (13 Wall.) 104, 125 (1871).

In its present form OPA 90 also includes no procedural device for vessel owners to follow to seek limitation. However, there is a difference between the state of the law in 1871 when *Norwich* was before this Court and the state of the law today. Supplemental Rule F is now in place as a suitable rule for administering any limitation statute, OPA 90 included.

Supplemental Rule F replaced former Admiralty Rules 51-54[5] in 1966 when civil and admiralty procedure were unified. *See* 28 U.S.C.A. Supplemental Rules 1966 advisory committee notes. In each version of the former Admiralty Rules, specific reference was made to the 1851 Limitation Act.[6] However, Supplemental Rule F(1) makes no reference to the Act and broadly provides that a "vessel owner may file a complaint in the appropriate district court . . . for limitation of liability **pursuant to statute**." (emphasis added). The word "statute" has replaced the specific reference in the former Admiralty Rules to the 1851 Limitation Act. A change in unambiguous language of a statute or rule reflects an intent to change its effect. *See Argosy, Ltd. v. Hennigan*, 404 F.2d 14 (5th Cir. 1968); *Watkins v. Bessemer State Technical College*, 782 F. Supp. 581 (N.D. Ala. 1992). *See also* Norman J. Singer, *Statutes & Statutory Construction* § 22.30 (5th ed. 1993). Therefore, this change in language shows an intent to expand the application of Supplemental Rule F beyond the 1851 Limitation Act, and this plain language should be given effect. *See Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, 498 U.S. 533, 540-541 (1991); *Garcia v. United States*, 469 U.S. 70, 75 (1984).

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[5] Admiralty Rules 51-54, as rescinded and replaced in 1966, are reported at 334 U.S. 864; 68 S. Ct. CLXII (1948). The rules are also reproduced at 5 *Benedict on Admiralty* at 91-96 (7th ed. 1997).

[6] Admiralty Rules 51-54 were originally Rules 54 through 57, 80 U.S. (13 Wall.) xi, xii-xiv (1872).

III.

IF SUPPLEMENTAL RULE F DOES NOT APPLY, THIS COURT SHOULD PROVIDE A RULE PURSUANT TO ITS AUTHORITY AS THE FINAL ARBITER OF ADMIRALTY AND MARITIME LAW.

In *Norwich* this Court recognized that the 1851 Limitation Act did not establish a procedure for vessel owners to follow to seek limitation under the Act. Whereupon this Court said: "[T]his court, undoubtedly, has the power to make all needful rules and regulations for facilitating the course of proceeding." *Norwich*, 80 U.S. (13 Wall.) at 124. Accordingly, this Court set forth in its opinion the procedure for vessel owners to follow, and Rules 54-57 were added to the Rules of Practice for the Courts of the United States in Admiralty and Maritime Jurisdiction to preserve the procedure for other cases. *See* 80 U.S. (13 Wall.) xi, xii-xiv (1872).

This Court continues to have rule-making authority. 28 U.S.C.A. section 2072 provides:

> (a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrates thereof) and the courts of appeals.

The only limitation on this authority is the requirement under 28 U.S.C.A. section 2074(a) that the Court transmit proposed rules to Congress "not later than May 1 of the year in which a rule prescribed under section 2072 is to become effective," and the "rule shall take effect no earlier than December 1 of the year in which

such rule is so transmitted unless otherwise provided by law."

In 1988, the procedure for enacting rules was substantially revised by the Judicial Improvements and Access to Justice Act of 1988, Pub.L.No. 100-702, 102 Stat. 4642. An early version of the Bill provided that the Judicial Conference would promulgate procedural rules instead of the Supreme Court. This suggestion was rejected, and the Supreme Court retained promulgating authority. *See* H.R. Rep. No. 99-422, at 20 (1985); *see also* H.R. Rep. 100-889, at 26 (1988), reprinted in 7 U.S.C.C.A.N. 5982, 5986 (adopting and applying H.R. Rep. No. 99-422 to the Access to Justice Act of 1988). H.R. Rep. 99-422 at 20 reads: "[U]nder the bill the Supreme Court continues its role as the promulgating authority."

This Court's rulemaking authority is not limited by 28 U.S.C.A. section 2073, which establishes a procedure for the Judicial Conference to assist in the prescription of rules. While it is often the case that rules are developed by the Judicial Conference for ultimate adoption by this Court, this Court retains independent authority to promulgate procedural rules. Furthermore, section 2073(e) provides that the "[f]ailure to comply with this section [2073] does not invalidate a rule prescribed under section 2072 or 2075 of this title." Thus, a procedural rule need not originate in the Judicial Conference to be effective, but rather, a rule can be prescribed directly by the Supreme Court in accordance with its powers under section 2072.

Moreover, when this Court acts in matters maritime, it is acting pursuant to a direct grant of authority under

the United States Constitution. Article III, section 2 of the United States Constitution provides: "The judicial Power shall extend . . . to all Cases of admiralty and maritime Jurisdiction. . . . " This is the only instance in the Constitution of a delegation of jurisdiction over an entire subject to the federal judiciary. *See* 1 Thomas J. Schoenbaum, *Admiralty and Maritime Law* § 3-1 at 55 (Practitioner Treatise Series, 2d ed. 1994). Therefore, this Court, as the final arbiter of admiralty and maritime law, must have the authority to make the needful rules and the Constitutional duty to do so.

CONCLUSION

The Court should grant this petition.

Respectfully submitted,

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[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 96-3494

D. C. Docket No. 94-233-CIV-T-23

BOUCHARD TRANSPORTATION COMPANY, INC., for exoneration from or limitation of liability as owner or as owner pro hoc vice of Tug Capt. Fred Bouchard and Barge B. No. 155, TUG CAPTAIN FRED BOUCHARD CORPORATION, for exoneration from or limitation of liability as owner or as owner pro hac vice of Tug Capt. Fred Bouchard and Barge B. No. 155, et al.,

Plaintiffs-Appellants,

versus

RAMONA M. UPDEGRAFF, AMBROSE G. UPDEGRAFF, et al.,

Claimants-Appellees,

BOCA CIEGA HOTEL, INC., et al.,

Movants-Appellees.

No. 96-3605

D. C. Docket No. 93-1399-CIV-T-23A

TSACABA SHIPPING COMPANY LIMITED, as owner of the M/V Balsa 37, Official Number 228571, HIONG GUAN NAVEGACION CO., LTD., as charterer of the M/V Balsa 37, Official Number 228571, et al.,

Plaintiffs-Appellants,

versus

ENVIRONMENTAL PROTECTION AGENCY, State of Florida, UNITED STATES OF AMERICA, et al.,

Claimants-Appellees,

BOCA CIEGA HOTEL, INC.,

Movant-Appellee.

No. 96-3727

D. C. Docket No. 94-227-CIV-T-21B

MARITRANS OPERATING PARTNERS L.P., for exoneration from or limitation of liability as owner of the tug Seafarer, official number 532672, and Barge Ocean 255, official number 534910, MARITRANS GENERAL PARTNER, INC., for exoneration

from or limitation of liability as owner of the tug Seafarer, official number 532672, and Barge Ocean 255, official number 534910,

Plaintiffs-Appellants,

versus

RAMONA M. UPDEGRAFF, AMBROSE G. UPDEGRAFF, et al.,

Claimants-Appellees,

BOCA CIEGA HOTEL, INC., et al.,

Movants-Appellees.

Appeals from the United States District Court for the Middle District of Florida

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(July 31, 1998)

Before COX, DUBINA and BLACK, Circuit Judges.

BLACK, Circuit Judge:

This appeal presents three issues: (1) whether the State of Florida, Department of Environmental Protection (Florida), is entitled to Eleventh Amendment sovereign immunity from a maritime limitation proceeding initiated pursuant to Rule F of the Supplemental Rules for Certain Admiralty and Maritime Claims (Rule F); (2) whether claims brought pursuant to the Oil Pollution Act of 1990, 33 U.S.C. §§ 2701-2761 (OPA 90), are subject to Rule F and therefore constrained to Rule F limitation proceedings; and (3) whether claims brought pursuant to Florida's Pollution Discharge Prevention and Control Act, Fla. Stat. ch. 376.011-.17, 376.19-.21 (Florida Act), are subject to

Rule F and therefore constrained to Rule F limitation proceedings.

I. BACKGROUND

A freighter and two tugs pushing petroleum-carrying barges collided in Tampa Bay on August 10, 1993. Within six months of the collision, the owners of the three vessels (Owners) each filed a complaint in the district court for exoneration from or limitation of liability in accordance with Rule F.

A. *Statutory Framework*

Rule F evolved as a procedural device to implement the Limitation of Shipowner's Liability Act of 1851, 46 U.S.C. app. §§ 181-196 (Limitation Act). The Limitation Act generally limits the liability of a shipowner for claims brought under general maritime law or common law to the value of the vessel and the freight then pending.[1] 46 U.S.C. app. § 183. Rule F implements the provisions of the Limitation Act by providing a mechanism for the pro rata distribution among claimants of the fund created by the Limitation Act's liability limits. *See Beiswenger Enters. Corp. v. Carletta*, 86 F.3d 1032, 1036 (11th Cir. 1996), *cert. denied*, ___ U.S. ___, 117 S. Ct. 2455 (1997).

In 1872, the Supreme Court recognized that the Limitation Act did not establish any judicial procedure by

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[1] Congress enacted the Limitation Act to promote investment in shipbuilding. *British Transp. Comm'n v. United States*, 354 U.S. 129, 133, 77 S. Ct. 1103, 1105 (1957).

which a vessel owner could seek to enforce the Act's liability limits. *Norwich & N.Y. Transp. Co. v. Wright*, 80 U.S. (13 Wall.) 104, 123 (1871). To fill this void, the Court set forth a procedure by which vessel owners could initiate a limitation proceeding to establish a concursus of claims. *Id.* at 124-25. The Court codified this procedure by adding to the Rules of Practice for the Courts of the United States in Admiralty and Maritime Jurisdiction (Admiralty Rules). *See* Appendix to 80 U.S. (13 Wall.) (1871). Over time, the Admiralty Rules were variously amended, renumbered, and re-labeled. The present form, entitled the Supplemental Rules for Certain Admiralty and Maritime Claims (Rules A-F), was adopted in 1966.

Rule F(1) states that a "vessel owner may file a complaint in the appropriate district court . . . for limitation of liability pursuant to statute." Rule F(1) requires the vessel owner to deposit with the district court or a trustee a security in an amount tied to the "value of the owner's interest in the vessel and pending freight." After the shipowner posts security, Rule F(4) instructs the district court to "issue a notice to all persons asserting claims with respect to which the complaint seeks limitation, admonishing them to file their respective claims with the clerk of the court and to serve on the attorneys for the plaintiff a copy thereof on or before a date to be named in the notice." Upon the shipowner's request, Rule F(3) directs the district court to "enjoin the further prosecution of any action or proceeding against the plaintiff or the plaintiff's property with respect to any claim subject to limitation in the action." Claimants asserting valid

claims receive a pro rata distribution of "the fund deposited or secured, or the proceeds of the vessel and pending freight." Rule F(8).

OPA 90 explicitly supersedes the Limitation Act's liability limits with respect to claims for cleanup costs and damages resulting from a discharge of oil, and establishes its own schedule of liability limits for damages resulting from the oil discharge. 33 U.S.C. § 2704. The Owners allege their liability is limited under OPA 90 to $1,200 per gross ton per vessel. *See* 33 U.S.C. § 2704. OPA 90 also explicitly permits states to adopt laws imposing additional liability for oil spills above the liability limits established by OPA 90 and the Limitation Act. 33 U.S.C. § 2718. Consistent with this provision, the Florida Act imposes additional liability for oil spills.

B. *Procedural History*

Each Owner's complaint initiated a limitation proceeding in the district court, in which each Owner separately sought exoneration or limitation of their respective liability. The Owners of the petroleum-carrying tank barges sought limitation of liability under the Limitation Act for claims brought pursuant to general maritime and common law, and sought limitation of liability under OPA 90 and the Florida Act for claims resulting from the discharge of oil. The Owner of the freighter sought limitation of liability under the Liability Act only. Notices were issued to potential claimants that all claims against each of the Owners had to be filed in the respective limitation proceeding within 60 days or the right to recover from the Owners would be forfeited. Pursuant to

Rule F(3), the district court entered injunctions staying all other proceedings against the Owners in connection with the collision, thereby requiring that claims under OPA 90 and the Florida Act be brought in the limitation proceedings. Each injunction created a concursus of all claims against the respective Owner. The district court consolidated the three limitation actions with four other cases arising out of the collision, thereby creating a single, consolidated proceeding.

The claims filed against the Owners in the limitation proceeding include the following: (1) the Owners' claims against each other under general maritime law, OPA 90, the Florida Act, and common law; (2) one tug crew's claims under general maritime law and the Jones Act for personal injuries; (3) a Coast Guard reservist's claim under general maritime law for injuries resulting from exposure to petroleum during the rescue effort; (4) the United States' claims under general maritime law, common law, and OPA 90 for cleanup costs, damage to natural resources, and response and monitoring costs, as well as subrogation claims pursuant to OPA 90; (5) Florida's claims under OPA 90, the Florida Act, and general maritime law for clean-up costs, damage to natural resources, response costs, and reimbursement costs; and (6) private parties' claims, brought individually and as a purported class, under OPA 90, the Florida Act, common law, and general maritime law for damages suffered as a result of the spills.

This case has a long and complicated procedural history.[2] We are concerned here with three of the district court's rulings. First, the district court ruled that Florida is entitled to sovereign immunity from the limitation proceeding. Second, the district court dismissed without prejudice the OPA 90 claims, concluding that claims brought pursuant to OPA 90 are not subject to Rule F and therefore cannot be constrained to the limitation proceeding. Third, the district court dismissed without prejudice the Florida Act claims based on the same reasoning. The Owners appeal all three of these rulings. We reverse the district court's ruling that Florida is entitled to Eleventh Amendment immunity from the limitation proceeding, but affirm the district court's dismissal of the OPA 90 and Florida Act claims.

II. STANDARD OF REVIEW

We review de novo the district court's order dismissing Florida from the limitation proceeding on the basis of Eleventh Amendment immunity. *Seminole Tribe of Florida v. Florida*, 11 F.3d 1016, 1021 (11th Cir. 1994), *aff'd*, 517 U.S. 44, 116 S. Ct. 1114 (1996). We also review de novo the district court's order dismissing the OPA 90 and Florida Act claims based on its conclusion that Rule F is not

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[2] This case has been before the Eleventh Circuit several times already. Most recently, this Court determined that the district court had to rule on Florida's claim of Eleventh Amendment immunity before the district court could require Florida to participate in mediation. *In re Bouchard Transp. Co. v. Florida Dept. of Envtl. Protection*, 91 F.3d 1445, 1448-49 (11th Cir. 1996).

applicable to those claims. *See DeKalb County Sch. Dist. v. Schrenko*, 109 F.3d 680, 687 (11th Cir.), *cert. denied* ___ U.S. ___, 118 S. Ct. 601 (1997).

III. DISCUSSION

A. Whether Florida is Entitled to Eleventh Amendment Immunity from the Limitation Proceeding

Florida filed various claims in the limitation proceeding pursuant to the Florida Act, OPA 90, and general maritime law. Florida asserts that it is entitled to Eleventh Amendment immunity from the limitation proceeding and, therefore, that its claims should not be subject to the limitation proceeding. We must resolve this assertion of sovereign immunity before we may address the other issues involved in this appeal. *Seaborn v. State of Fla., Dep't of Corrections*, ___ F.3d ___, ___ (11th Cir. 1998). No Court of Appeals has addressed this issue.[3]

The Eleventh Amendment prevents a suit in federal court against a state by a citizen of that state or any other state. *California v. Deep Sea Research*, ___ U.S. ___, ___, 118 S. Ct. 1464, 1470 (1998).[4] We therefore must determine

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[3] Two district courts have addressed this issue; both held that a limitation proceeding is not a suit against a state in violation of the Eleventh Amendment. *See In re Abaco Treasure Ltd.*, 1993 A.M.C. 1976, 1977 (S.D. Fla. 1993); *In re Sand Bar I, Inc.*, 1993 A.M.C. 1312, 1317 (E.D. La. 1992).

[4] Although the language of the Eleventh Amendment literally applies only to "any suit in law or equity," the Supreme Court has interpreted the Amendment's restrictions to include federal maritime jurisdiction. *Deep Sea Research*, ___ U.S. at ___, 118 S Ct. at 1471.

whether the filing of a limitation proceeding pursuant to Rule F constitutes a suit against Florida.

In ruling on this issue, the district court did not have the benefit of the Supreme Court's opinion in *Deep Sea Research*, which addresses the application of the Eleventh Amendment in the context of an admiralty in rem proceeding. *Id.* at ___, 118 S. Ct. at 1467. In *Deep Sea Research*, the Supreme Court rejected California's assertion of Eleventh Amendment immunity from an in rem admiralty action. *Id.* The Supreme Court held that the Eleventh Amendment does not bar an in rem admiralty action where the state does not have actual possession of the res:

> Based on longstanding precedent respecting the federal courts' assumption of *in rem* admiralty jurisdiction over vessels that are not in the possession of a sovereign, we conclude that the Eleventh Amendment does not bar federal jurisdiction over the *Brother Jonathan* and, therefore, that the District Court may adjudicate DSR's and the State's claims to the shipwreck.

Id. at ___, 118 S. Ct. at 1473.

Although this admiralty limitation proceeding is not an in rem action, it is sufficiently analogous for *Deep Sea Research* to compel the conclusion that Florida is not entitled to sovereign immunity. Like an in rem proceeding, the plaintiffs in the limitation proceeding neither named any specific entities as defendants in their complaints nor formally served process on any defendants.[5]

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[5] Although Rule F(2) requires that the complaint list all law suits pending against the vessel owner, the complaint does not

Instead, the plaintiffs posted security bonds with the district court in the amount of their maximum liability and the district court notified potential claimants to make their claims on the res deposited with the district court.[6] As in *Deep Sea Research*, Florida does not have possession of the disputed res – the bonds are part of the record of this case, currently in the possession of the federal judiciary. Accordingly, we hold that Florida is not entitled to Eleventh Amendment immunity from the limitation proceeding.

B. Whether Rule F Applies to Claims Brought Pursuant to OPA 90

Rule F does not specify the limitation statutes to which it applies. *See* Rule F(1). The Owners contend that Rule F generally applies to all limitation statutes. The Owners argue that OPA 90 is a limitation statute insofar as it limits the Owners' liability to $1,200 per gross ton for cleanup costs and natural damages, and that the OPA 90

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name the plaintiffs in those cases as defendants in the limitation proceeding. Instead, all claimants must enter the limitation proceeding on their own initiative by filing and serving a claim in accordance with Rule F(5).

[6] The Limitation Act substantively alters the claimants' common law and general maritime remedies – upon proof that the Owners are entitled to limit their liability, the Owners are effectively exonerated of in personam liability beyond the value of the vessel and pending freight. The Limitation Act therefore preempts all other general maritime and common law causes of action against the Owners outside of this limitation proceeding. Indeed, if Florida were immune from this proceeding, Florida would have no remedy at all for its general maritime and common law claims.

claims against them therefore must be resolved in a Rule F limitation proceeding.[7] More specifically, the Owners assert that there are two sets of limited funds that must be distributed among valid claims arising from the collision: (1) a set of funds, each equal to the value of the respective vessel, to be distributed pro rata among all valid maritime and common law claims subject to the Limitation Act; and (2) a set of funds, each equal to $1,200 per gross ton for the respective vessel, to be distributed pro rata among all valid OPA 90 claims. Therefore, the Owners contend, Rule F should apply to OPA 90 claims to the same extent it applies to claims subject to the Limitation Act. We disagree.

OPA 90 is not subject to Rule F for two reasons: (1) OPA 90 claimants do not face a limited fund necessitating a pro rata distribution; and (2) Congress has specifically set forth procedures to implement the strictures of OPA 90.

First, the Owners' theory is based on a false premise. OPA 90 claimants do not face a limited fund because OPA 90 uses the Oil Spill Liability Trust Fund (Fund) to ensure that every claim made pursuant to OPA 90 will be paid in full. 26 U.S.C. § 9509; 33 U.S.C. §§ 2712, 2713. Although OPA 90 limits the liability of the Owners for certain costs and damages arising from the oil spill in this case to $1,200 per gross ton, the Fund backstops the Owners'

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[7] OPA 90 provides various liability limits, depending on the nature of the accident. 33 U.S.C. § 2704. Although there are no facts of record in this appeal, the parties have proceeded on the assumption that $1,200 per gross ton is the applicable limit for each vessel in this case.

limited liability and ensures that every valid claim will be paid in full.[8] Accordingly, while OPA 90 is a limitation statute in some sense (i.e., it limits the ship owner's liability), it is not a limitation statute in the relevant sense – it does not limit the total amount of money that can be recovered by the claimants in this case. There is no need to bring all of the claimants into a single proceeding to make a pro rata distribution because every claim will be paid in full.

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[8] The Owners argue that OPA 90 does create a limited fund because the maximum amount that may be paid by the Fund with respect to any single incident is $1 billion. *See* 26 U.S.C. § 9509(c)(2)(A)(i). There has been no allegation that the claims in this case pose any danger of exceeding the $1 billion cap. Even if OPA 90 were judicially analogous to the Limitation Act and therefore subject to Rule F, this Circuit does not require claimants to proceed in a Rule F limitation proceeding absent the real possibility that some claims will not be paid:

> Courts have attempted to give effect to both the Limitation Act and the saving to suitors clause whenever possible, by identifying two sets of circumstances under which the damage claimants must be allowed to try liability and damages issues in a forum of their own choosing. The first circumstance arises where the limitation fund exceeds the aggregate amount of all the possible claims against the vessel owner. In such a case, the vessel owner is not exposed to liability in excess of the limitation fund, and thus the vessel owner's rights under the Limitation Act are not implicated.

Beiswenger, 86 F.3d at 1037 (citations omitted).

Second, OPA 90 is not subject to Rule F because, whereas the Limitation Act was enacted without procedural mechanisms, Congress expressly set forth procedures for implementing OPA 90. In reaching the same conclusion, the First Circuit summarized the claims procedures set forth in OPA 90:

> The OPA requires all claims for removal costs or damages to be presented first to the responsible party or guarantor. If the responsible party denies liability or the claim is not settled within 90 days, the claimant may proceed against the responsible party in court or present the claim to the Fund. In some enumerated instances, claims may be presented directly to the Fund without first presenting them to the responsible party. The purpose of the claim presentation procedure is to promote settlement and avoid litigation.

MetLife Capital Corp. v. M/V Emily S., 132 F.3d 818, 824 (1st Cir. 1997) (internal citations and quotations omitted), *cert. denied*, ___ U.S. ___, ___ S. Ct. ___, no. 97-1610, (June 26, 1998). Unlike the Limitations Act, OPA 90 can accomplish its statutory goals without the assistance of Rule F.

This conclusion is supported by principles of statutory construction. Comparing the OPA 90 statutory procedures with the Rule F procedures reveals two largely conflicting frameworks for resolving OPA 90 claims. For example, OPA 90 gives claimants three years to bring claims against a responsible party. 33 U.S.C. § 2717(f). OPA 90 also requires that claimants first present their claims to the responsible party, and then, if a claim is not settled within the requisite period of time, the claimant may proceed in court. 33 U.S.C. § 2713(a), (c). In some

instances, claimants may proceed directly to the OPA Fund and then subrogate to the United States the claims against the responsible party. 33 U.S.C. § 2715. If OPA 90 claims were subject to Rule F, every claim (including claims subrogated to the United States) would have to be brought within the period announced by the district court in the notice sent to potential claimants, which was 60 days in this case. Subjecting OPA 90 claims to Rule F effectively would allow ship owners to opt out of the Congressionally mandated procedures for resolving OPA 90 claims. Additionally, the venue provisions of OPA 90 permit claimants to proceed "in any district in which the discharge or injury or damages occurred, or in which the defendant resides, may be found, has its principal office, or has appointed an agent for service of process." 33 U.S.C. § 2717(b). The injunction issued by the district court in a Rule F proceeding would require OPA 90 claimants to proceed only in the district court chosen by the vessel owners, and the process envisioned by OPA 90's jurisdiction and venue provisions would be rendered meaningless. Similarly, OPA 90 grants jurisdiction to state courts to hear claims arising thereunder. 33 U.S.C. § 2717(c). This grant of concurrent jurisdiction would be rendered meaningless if OPA 90 claims were subject to Rule F because Rule F complaints must be filed in federal court. *MetLife*, 132 F.2d at 822.[9]

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[9] The Owners assert that this conflict of procedures is no different than the conflict that occurs when Jones Act claims are required to be brought in a Rule F limitation proceeding (e.g., the 3-year statute of limitations normally enjoyed by Jones Act claimants is replaced with the shorter period announced pursuant to Rule F). While it is true that Rule F procedures

In resolving the conflict between the Rule F procedures and the OPA 90 procedures, a fundamental principle of statutory construction requires that we apply the more specific procedures.[10] *San Pedro v. United States*, 79 F.3d 1065, 1069 (11th Cir.) ("We therefore follow the principle, upheld by the Supreme Court on numerous occasions, that a specific statute takes precedence over a more general one."), *cert. denied*, ___ U.S. ___, 117 S. Ct. 431 (1996). Furthermore, we avoid statutory constructions that render provisions meaningless. *Woodfork v. Marine Cooks & Stewards Union*, 642 F.2d 966, 970-71 (5th Cir. Apr. 1981)[11] ("A basic principle of statutory construction is that a statute should not be construed in such a way as to render certain provisions superfluous or insignificant." (internal quotations and citations omitted)). Consistent with these principles of statutory construction, OPA 90 claims must be resolved pursuant to the procedures contained in that statute, rather than replacing those procedures with Rule F.

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govern in the small percentage of Jones Act cases that implicate the liability limits of the Limitation Act, the Owners' theory would subject every OPA 90 claim to Rule F, giving ship owners the option to replace OPA 90's 3-year statutory period in every case.

[10] Although the Supplemental Rules for Certain Admiralty and Maritime Claims are not part of a Congressionally-enacted statute, the decision whether to apply those rules or the more specific procedures contained in OPA 90 is informed by general principles of statutory construction.

[11] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), this Court adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to close of business on September 30, 1981.

The Owners argue that Rule F must be applied to preserve judicial resources and avoid the burden of defending a multiplicity of suits in various fora. The Owners' understandable interest in consolidating this potentially unwieldy litigation does not overcome the Congressionally mandated procedures for adjudicating OPA 90 claims. This Circuit does not view the convenience of the shipowner as a legitimate goal of a Rule F limitation proceeding:

> Absent an insufficient fund (1) the statutory privilege of limiting liability is not in the nature of a *forum non conveniens* doctrine, and (2) the statute gives a ship-owner, sued in several suits no advantage over other kinds of defendants in the same position. Concourse is to be granted only when necessary in order to distribute an inadequate fund. The purpose of limitation proceedings is not to prevent a multiplicity of suits but, in an equitable fashion, to provide a marshalling of assets – the distribution pro rata of an inadequate fund among claimants, none of whom can be paid in full.

Pershing Auto Rentals, Inc. v. Gaffney, 279 F.2d 546, 550-51 (5th Cir. 1960) (internal citations and quotations omitted). Furthermore, neither Rule F not the Limitation Act grants the Owners a right to a concursus. Rule F merely provides a procedure for distributing a limited fund among competing claimants where the real possibility exists that some claims will not be paid in full:

> [W]here the value of the vessel and the pending freight, the fund paid into the proceeding by the offending owner, exceeds the claims made against it, there is no necessity for the maintenance of the concourse. . . .

> For us to expand the jurisdictional provisions of the Act to prevent respondent from now proceeding in her state case would transform the Act from a protective instrument to an offensive weapon by which the shipowner could deprive suitors of their common-law rights, even where the limitation fund is known to be more than adequate to satisfy all demands upon it. The shipowner's right to limit liability is not so boundless. The Act is not one of immunity from liability but of limitation of it and we read no other privilege for the shipowner into its language over and above that granting him limited liability.

Lake Tankers Corp. v. Henn, 354 U.S. 147, 152-53, 77 S. Ct. 1269, 1272 (1957).[12]

Rule F is designed to distribute a limited fund to multiple claimants where Congress has provided no statutory procedure for that distribution and where all claims cannot be paid in full. This case satisfies neither of these requirements – Congress has provided a procedure for implementing OPA 90 and the Fund will guarantee full payment of all valid OPA 90 claims arising from this oil discharge.

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[12] The Owners argue that the affirmative defense of limited liability will not work if multiple actions proceed in different courts. We disagree. OPA 90 establishes a limit of liability for the Owners. After paying out that amount, no cause of action will lie against the Owners pursuant to OPA 90. The remaining claims (or the remaining portions of claims) will be paid from the Fund.

C. Whether Rule F Applies to Claims Brought Pursuant to the Florida Act

OPA 90 authorizes states to adopt liability laws for oil spills and exempts those laws from the provisions of the Liability Act. 33 U.S.C. § 2718. Accordingly, the Florida Act is neither subject to the Limitation Act's provisions nor otherwise preempted. We will not impose Rule F on the Florida Act because, like OPA 90 claimants, Florida Act claimants do not face a limited fund. The Florida Act establishes the Florida Coastal Protection Trust Fund (Florida Fund) to ensure that all claims are paid in full despite the limitation of liability enjoyed by responsible parties. Fla. Ch. 376.11. Moreover, as discussed in the previous section of this opinion, the Owners do not have a general entitlement to a concursus; Rule F is not designed to make litigation more convenient for vessel owners.

Furthermore, the Florida Act sets forth an elaborate set of claims procedures to guide the administration of claims against responsible parties and against the Florida Fund. Fla. Stat. ch. 376.123. Rule F was designed to correct a procedural void in a federal law. Florida has left no such void in its liability scheme.

IV. CONCLUSION

In light of *Deep Sea Research*, the district court erred in ruling that Florida is entitled to Eleventh Amendment immunity from the limitation proceeding. The district court correctly dismissed without prejudice the claims

brought against the Owners under OPA 90 and the Florida Act.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
IN ADMIRALTY

TUG CAPT. FRED BOUCHARD CORP. et al., Plaintiffs, v. M/V BALSA 37, etc., et al., Defendants. _____/	CONSOLIDATED CASE NOS. 93-1321-CIV-T-23B 93-1326, 93-1363, 93-1366, 93-1399
IN THE MATTER OF THE COMPLAINT OF MARITRANS OPERATING PARTNERS LP and MARITRANS GENERAL PARTNER, INC. FOR EXONERATION FROM OR LIMITATION OF LIABILITY AS OWNER OF THE TUG SEAFARER, Official No. 532672 and BARGE OCEAN 255, Official No. 534910 _____/	CASE NO. 94-227-CIV-T-23B
IN THE MATTER OF THE COMPLAINT OF BOUCHARD TRANSPORTATION CO., INC., TUG CAPTAIN FRED BOUCHARD, INC., AND B. NO. 155 CORPORATION, FOR EXONERATION FROM OR LIMITATION OF LIABILITY AS OWNER OR AS OWNER PRO HAC VICE OF TUG CAPT. FRED BOUCHARD AND BARGE B. NO. 155. _____/	CASE NO. 94-233-CIV-T-23B

ORDER

(Filed Oct. 22, 1996)

Several claimants (i.e., United States, Florida Department of Environmental Protection, the purported "Updegraff class," and the purported "Boca Ciega Hotel, Inc., class") move to dismiss (Case No. 93-1399, Docs. 50-1, 50-2, 65-1, 65-2, 108-1, and 108-2; Case No. 94-227, Docs. 16, 88, 112, and 175; Case No. 94-233, Docs. 19, 78, 100, and 172) these limitation actions as to their claims pursuant to the Oil Pollution Act of 1990, 33 U.S.C. §§ 2701-19, and Florida's Pollutant Discharge Prevention and Control Act, Fla. Stat. §§ 376.011-.21. Upon consideration, the motions are **GRANTED.** *See In re Jahre SPRAY II K/S,* 1996 WL 451315 (D.N.J. August 5, 1996). Neither OPA, Supplemental Rule F, nor their legislative history unequivocally suggest that the claimants are required to lodge their oil spill claims exclusively in these concursus proceedings, regardless of whether the resolution of those claims would be governed by the substantive provisions contained in the applicable statute. To the contrary, a disinterested reading of the materials cited by the parties leads to the troublesome conclusion that the claimants may assert those claims independent of these proceedings.

Florida Department of Environmental Protection's motions to dismiss (Case No. 94-227, Docs. 111 and 152; Case No. 94-233, Docs. 99 and 139) based on the Eleventh Amendment are **GRANTED.** The vessel owners rely almost exclusively on *In re Sand Bar I, Inc.,* 1993 A.M.C. 1312 (E.D. La. 1992) and *In re Abaco Treasure Ltd.,* 1993 A.M.C. 1976 (S.D. Fla. 1993). However, those cases

embrace a legal fiction that fails to withstand scrutiny under recent Eleventh Circuit and Supreme Court decisions (cited by the DEP) that expound Eleventh Amendment jurisprudence. *See, e.g., Seminole Tribe of Florida v. Florida*, ___ U.S. ___, 116 S.Ct. 1114 (1996); *see also In re Williamson Towing Co, Inc.*, 534 F.2d 758 (7th Cir. 1976). Further, *Sand Bar I, Inc.* specifically rejects the vessel owners' principal argument that the DEP "waived" its right to immunity by filing in these actions affirmative claims for relief. 1993 A.M.C. at 1313 n.1. The DEP's decision to file those claims was far from voluntary – it was mandated by this Court's order requiring all claimants to file their claims or face default.

Accordingly, the injunctions issued in these limitation proceedings shall not apply (1) to the claims brought by the DEP, under any theory, for pollution removal costs and damages as described in the Oil Pollution Act of 1990, 33 U.S.C. §§ 2701-19, and Florida's Pollutant Discharge Prevention and Control Act, Fla. Stat. §§ 376.011-.21, (2) to the claims brought by the remaining claimants pursuant to either the Oil Pollution Act of 1990, 33 U.S.C. §§ 2701-19, or Florida's Pollutant Discharge Prevention and Control Act, Fla. Stat. §§ 376.011-.21, or (3) to the claims brought by the United States pursuant to either the Clean Water Act, 33 U.S.C. §§ 1251-1376 or the Rivers and Harbors Act, 33 U.S.C. §§ 401-67.[1] The

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[1] The vessel owners raise significant and legitimate concerns regarding prejudice, inconsistent rulings, judicial economy, splitting of claims, unnecessary expenditure of resources, and the like. They advanced those concerns with skill and determination. I concede that I experience a degree of uneasiness with the effect of today's ruling. As I announced at

claimants are permitted to withdraw the claims subject to this order. All other claims shall remain. The counter-claims against the DEP are dismissed without prejudice.

ORDERED in Tampa, Florida, on October 22nd, 1996.

/s/ Steven D. Merryday
Steven D. Merryday
United States District Judge

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the conclusion of oral argument, this is one of those instances when the result that makes the most sense (and the result that perhaps ought to be pursued) is either inconsistent with or not permitted by a combination of the prevailing law and the parties. Perhaps the Eleventh Circuit will disagree with my view or the legislative and judicial bodies responsible for promulgating the governing statutes and rules will provide some clarity and guidance. Both the effect of this order and these limitation actions (as they pertain to the moving claimants) are STAYED pending the resolution of any appeals.

At the September 10, 1996, status conference, the vessel owners informed the court that they intend to proffer to the DEP and the United States a "global" settlement that would resolve the asserted claims. Pursuant to 11th Cir. R. 33-1(c), the Eleventh Circuit may wish to conduct a settlement conference. As a skilled facilitator possessing significant knowledge about the issues raised in these proceedings, Peter J. Grilli is a candidate worthy of serving as the conference attorney.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

IN ADMIRALTY

IN THE MATTER OF THE COMPLAINT OF BOUCHARD TRANSPORTATION CO., INC., TUG CAPTAIN FRED BOUCHARD INC., AND B NO. 155 CORPORATION, FOR EXONERATION FROM OR LIMITATION OF LIABILITY AS OWNER OR AS OWNER *PRO HAC VICE* OF TUG CAPT. FRED BOUCHARD AND BARGE B. NO. 155.

CASE NO. 94-233-Civ-T-21B

_____/

INJUNCTION

Plaintiffs, BOUCHARD TRANSPORTATION CO., INC., TUG CAPTAIN FRED BOUCHARD INC., and B NO. 155 CORPORATION (collectively "BOUCHARD"), having on February 9, 1994, filed a Complaint for exoneration from or limitation of liability in respect to losses and damages arising out of a voyage of Tug CAPT. FRED BOUCHARD and Barge B. NO. 155 on August 10, 1993, and BOUCHARD having stated in its Complaint the facts and circumstances upon which exoneration from or limitation of liability are claimed, and having filed an *ad interim* Stipulation of value, duly executed by BOUCHARD, as Principal, the performance of which has been secured in accordance with the rules and practice of

this Court, and it appearing that BOUCHARD desires to obtain a restraining order, it is

ORDERED that the further prosecution of any pending actions, suits or legal proceedings in any court whatsoever, and the institution and prosecution of any suits, actions, or legal proceedings of any nature or description whatsoever in any court whatsoever, except in this proceeding for exoneration from or limitation of liability, against BOUCHARD TRANSPORTATION CO., INC., TUG CAPTAIN FRED BOUCHARD INC., or B NO. 155 CORPORATION or against Tug CAPT. FRED BOUCHARD and Barge B. NO. 155 or other property or their underwriters in respect of any claim or claims arising out of or connected with the aforesaid voyage of August 10, 1993, be, and the same are hereby, stayed and restrained until the hearing and determination of this proceeding; and it is further

ORDERED, that the notice provision of subsection (4) of Rule F of the Supplemental Rules for Certain Admiralty and Maritime Claims (Rule F) and the Claims and Answer provisions of subsection (5) of Rule F are not to apply to any person who presents a claim to Turnaboat Services, Ltd. for oil pollution damages as defined in the Oil Pollution Act of 1990, 33 U.S.C. §2702, unless and until that person brings a lawsuit in any Court, at which time Plaintiffs must serve Notice on that person in accordance with Rule F(4) and thereupon that person shall file a claim and answer herein in accordance with Rule F(5).

ORDERED that service of this Injunction as a restraining order may be made by mailing a copy of this

Injunction to the person or persons to be restrained or to their respective attorneys or representatives.

DONE AND ORDERED in Chambers at Tampa, Florida this 9th day of February, 1994

/s/ Thomas G. Wilson
UNITED STATES
MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

IN ADMIRALTY

IN THE MATTER OF THE COMPLAINT OF BOUCHARD TRANSPORTATION CO., INC., TUG CAPTAIN FRED BOUCHARD INC., AND B NO. 155 CORPORATION, FOR EXONERATION FROM OR LIMITATION OF LIABILITY AS OWNER OR AS OWNER *PRO HAC VICE* OF TUG CAPT. FRED BOUCHARD AND BARGE B. NO. 155.

CASE NO. 94-233-Civ-T-21B

_____/

MONITION

The President of the United States, to the Marshal of the United States for the Middle District of Florida, greetings:

WHEREAS, a Complaint was filed in the United States District Court for the Middle District of Florida on February 9, 1994, by BOUCHARD TRANSPORTATION CO., INC., TUG CAPTAIN FRED BOUCHARD INC., and B NO. 155 CORPORATION (collectively "BOUCHARD") for exoneration from or limitation of liability as owner of Tug CAPT. FRED BOUCHARD and Barge B. NO. 155 in respect to losses and damages occasioned by or occurring on the voyage upon which the said vessels were engaged on August 10, 1993, for the reasons mentioned in the said Complaint, and praying that a monition issue out of said

Court citing all persons claiming damages by reason of the matters aforesaid to appear before said Court and to make due proof of their respective claims and to answer the allegations of the Complaint, and that if it shall appear that BOUCHARD is not liable for any such losses and damages it may be so finally decreed by this Court, or if it shall appear that BOUCHARD is liable for any such losses and damages that BOUCHARD's liability be limited to the amount or value of the interest of BOUCHARD TRANSPORTATION CO., INC., TUG CAPTAIN FRED BOUCHARD INC., and B NO. 155 CORPORATION in the said vessels at the end of the voyage upon which the vessels were engaged at the time described in the Complaint, and/or the limitation amount set forth in 33 U.S.C. § 2704 or *Fla. Stat.* 376.12(1) (1993) or any other applicable limitation law, and praying for other further relief; and

WHEREAS, BOUCHARD has filed in the office of the Clerk of the District Court an *ad interim* Stipulation undertaking to pay into the Court within ten (10) days after the entry of an order herein appraising the value of the said vessels at the end of the said voyage, the amount or value of such interest as thus ascertained or to file in the proceeding a bond or stipulation for value in the usual form, with surety, in said amount, and the Court having directed by an order made and entered on the 9th day of February, 1994, that a monition issue against all persons claiming damages for any losses and damages arising during the said voyage, citing them to file their respective claims for oil pollution damages, as defined in the Oil Pollution Act of 1990, 33 U.S.C. §2702, if they have not done so to date, with the representative of plaintiff, to

wit: Turnaboat Services., Ltd., 7110 Gulf Boulevard, St. Petersburg, Florida 33706 in accordance with the Oil Pollution Act of 1990, 33 U.S.C. §2713(a) on or before April 11, 1994.

Also citing all persons with claims for damages other than Oil Pollution damages, as defined in the Oil Pollution Act of 1990, 33 U.S.C. §2702 to file their claims with the Clerk of the Court and to serve on and mail to the attorneys for BOUCHARD a copy thereof on or before April 11, 1994.

And also citing those persons who have brought lawsuits for oil pollution damages, as defined in the Oil Pollution Act of 1990, 33 U.S.C. §2702 to file their claims with the Clerk of the Court and to serve on or mail to the attorneys for BOUCHARD a copy thereof within 60 days after the commencement of their lawsuit or within 60 days after the date of this Monition, whichever is later.

You are therefore commanded to cite all persons claiming oil pollution damages as defined in the Oil Pollution Act of 1990, 33 U.S.C. §2702 to file their claims with the representative of plaintiffs, to wit: Turnaboat Services, Ltd., 7110 Gulf Boulevard, St. Petersburg, Florida 33706, if they have not done so already, in accordance with the Oil Pollution Act of 1990, 33 U.S.C. §2713(a) and for all persons claiming damages other than oil pollution damages, as defined in the Oil Pollution Act of 1990, 33 U.S.C. §2702 arising out of the said voyage or the collision of August 10, 1993, to file their claims with the Clerk of the Court and to serve on or mail to Fowler, White, Gillen, Boggs, Villareal & Banker, P.A., Post Office Box

1438, Tampa, Florida 33601 attorneys for BOUCHARD, a copy thereof on or before April 11, 1994, and

You are also commanded to cite all persons who have brought lawsuits for oil pollution damages, as defined in the Oil Pollution Act of 1990, 33 U.S.C. §2701 to file their claims with the Clerk of the Court and to serve on or mail to Fowler, White, Gillen, Boggs, Villareal & Banker, P.A., Post Office Box 1438, Tampa, Florida 33601, attorneys for BOUCHARD, a copy thereof on or before 60 days after the commencement of their lawsuit or within 60 days after the date of this Monition, whichever is later.

You are also commanded to cite those persons who have brought lawsuits for oil pollution damages, as defined in the Oil Pollution Act of 1990, 33 U.S.C. §2702 and all persons with claims for damages other than oil pollution damages, as defined in the Oil Pollution Act of 1990, 33 U.S.C. §2702 to appear and answer the Complaint herein on or before the date last named or within such further time as the Court may grant and to have and to receive such further relief as may be due.

And what you have done in the premises, do you then make return to this Court together with this writ.

WITNESS the Honorable THOMAS G. WILSON, United States Magistrate Judge for the Middle District of Florida, this 10th day of February, 1994.

DAVID L. EDWARDS, CLERK

By: /s/ Ginger K. McGurk
Deputy Clerk

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SUPPLEMENTAL RULES FOR CERTAIN ADMIRALTY AND MARITIME CLAIMS

Rule F. Limitation of Liability

(1) Time for Filing Complaint; Security. Not later than six months after receipt of a claim in writing, any vessel owner may file a complaint in the appropriate district court, as provided in subdivision (9) of this rule, for limitation of liability pursuant to statute. The owner (a) shall deposit with the court, for the benefit of claimants, a sum equal to the amount or value of the owner's interest in the vessel and pending freight, or approved security therefor, and in addition such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of the statutes as amended; or (b) at the owner's option shall transfer to a trustee to be appointed by the court, for the benefit of claimants, the owner's interest in the vessel and pending freight, together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of the statutes as amended. The plaintiff shall also give security for costs and, if the plaintiff elects to give security, for interest at the rate of 6 percent per annum from the date of the security.

(2) Complaint. The complaint shall set forth the facts on the basis of which the right to limit liability is asserted and all facts necessary to enable the court to determine the amount to which the owner's liability shall be limited. The complaint may demand exoneration from as well as limitation of liability. It shall state the voyage if any, on which the demands sought to be limited arose,

with the date and place of its termination; the amount of all demands including all unsatisfied liens or claims of lien, in contract or in tort or otherwise, arising on that voyage, so far as known to the plaintiff, and what actions and proceedings, if any, are pending thereon; whether the vessel was damaged, lost, or abandoned, and, if so, when and where; the value of the vessel at the close of the voyage or, in case of wreck, the value of her wreckage, strippings, or proceeds, if any, and where and in whose possession they are; and the amount of any pending freight recovered or recoverable. If the plaintiff elects to transfer the plaintiff's interest in the vessel to a trustee, the complaint must further show any prior paramount liens thereon, and what voyages or trips, if any, she has made since the voyage or trip on which the claims sought to be limited arose, and any existing liens arising upon any such subsequent voyage or trip, with the amounts and causes thereof, and the names and addresses of the lienors, so far as known; and whether the vessel sustained any injury upon or by reason of such subsequent voyage or trip.

(3) Claims Against Owner; Injunction. Upon compliance by the owner with the requirements of subdivision (1) of this rule all claims and proceedings against the owner or the owner's property with respect to the matter in question shall cease. On application of the plaintiff the court shall enjoin the further prosecution of any action or proceeding against the plaintiff or the plaintiff's property with respect to any claim subject to limitation in the action.

(4) Notice to Claimants. Upon the owner's compliance with subdivision (1) of this rule the court shall issue

a notice to all persons asserting claims with respect to which the complaint seeks limitation, admonishing them to file their respective claims with the clerk of the court and to serve on the attorneys for the plaintiff a copy thereof on or before a date to be named in the notice. The date so fixed shall not be less than 30 days after issuance of the notice. For cause shown, the court may enlarge the time within which claims may be filed. The notice shall be published in such newspaper or newspapers as the court may direct once a week for four successive weeks prior to the date fixed for the filing of claims. The plaintiff not later than the date of second publication shall also mail a copy of the notice to every person known to have made any claim against the vessel or the plaintiff arising out of the voyage or trip on which the claims sought to be limited arose. In cases involving death a copy of such notice shall be mailed to the decedent at the decedent's last known address, and also to any person who shall be known to have made any claim on account of such death.

(5) Claims and Answer. Claims shall be filed and served on or before the date specified in the notice provided for in subdivision (4) of this rule. Each claim shall specify the facts upon which the claimant relies in support of the claim, the items thereof, and the dates on which the same accrued. If a claimant desires to contest either the right to exoneration from or the right to limitation of liability the claimant shall file and serve an answer to the complaint unless the claim has included an answer.

(6) Information to be Given Claimants. Within 30 days after the date specified in the notice for filing claims, or within such time as the court thereafter may allow, the plaintiff shall mail to the attorney for each

claimant (or if the claimant has no attorney to the claimant) a list setting forth (a) the name of each claimant, (b) the name and address of the claimant's attorney (if the claimant is known to have one), (c) the nature of the claim, i.e., whether property loss, property damage, death, personal injury etc., and (d) the amount thereof.

(7) Insufficiency of Fund or Security. Any claimant may by motion demand that the funds deposited in court or the security given by the plaintiff be increased on the ground that they are less than the value of the plaintiff's interest in the vessel and pending freight. Thereupon the court shall cause due appraisement to be made of the value of the plaintiff's interest in the vessel and pending freight; and if the court finds that the deposit or security is either insufficient or excessive it shall order its increase or reduction. In like manner any claimant may demand that the deposit or security be increased on the ground that it is insufficient to carry out the provisions of the statutes relating to claims in respect of loss of life or bodily injury; and, after notice and hearing, the court may similarly order that the deposit or security be increased or reduced.

(8) Objections to Claims: Distribution of Fund. Any interested party may question or controvert any claim without filing an objection thereto. Upon determination of liability the fund deposited or secured, or the proceeds of the vessel and pending freight, shall be divided pro rata, subject to all relevant provisions of law, among the several claimants in proportion to the amounts of their respective claims, duly proved, saving, however, to all parties any priority to which they may be legally entitled.

(9) Venue; Transfer. The complaint shall be filed in any district in which the vessel has been attached or arrested to answer for any claim with respect to which the plaintiff seeks to limit liability; or, if the vessel has not been attached or arrested, then in any district in which the owner has been sued with respect to any such claim. When the vessel has not been attached or arrested to answer the matters aforesaid, and suit has not been commenced against the owner, the proceedings may be had in the district in which the vessel may be, but if the vessel is not within any district and no suit has been commenced in any district, then the complaint may be filed in any district. For the convenience of parties and witnesses, in the interest of justice, the court may transfer the action to any district; if venue is wrongly laid the court shall dismiss or, if it be in the interest of justice, transfer the action to any district in which it could have been brought. If the vessel shall have been sold, the proceeds shall represent the vessel for the purposes of these rules.